

Agricultural Marketing Service, USDA

Pt. 1208

§ 1207.514 [Reserved]

§ 1207.515 Safeguards.

The Board may require reports by designated handlers and importers on the handling, importation, and disposition of exempted potatoes. Also, authorized employees of the Board or the Secretary, may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

[37 FR 17379, Aug. 26, 1972, as amended at 56 FR 40232, Aug. 14, 1991]

RECORDS

§ 1207.532 Retention period for records.

Each handler and importer required to make reports pursuant to this subpart shall maintain and retain such records for at least 2 years beyond the end of the marketing year of their applicability:

(a) One copy of each report made to the Board; and

(b) Such records as are necessary to verify such reports.

[37 FR 17379, Aug. 26, 1972, as amended at 56 FR 40232, Aug. 14, 1991]

§ 1207.533 Availability of records.

(a) Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

(b) Importers shall also maintain for 2 years records on the total quantities of potatoes imported and on the total quantities of potato products imported, and a record of each importation of potatoes, potato products, and seed potatoes including quantity, date, and port of entry, and shall make such records available for inspection by authorized employees of the Board or the Secretary during regular business hours.

[56 FR 40232, Aug. 14, 1991]

§ 1207.534 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control number 0581-0093.

[49 FR 23826, June 8, 1984]

CONFIDENTIAL INFORMATION

§ 1207.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handler and importers and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1207.352 of the Plan.

[56 FR 40232, Aug. 14, 1991]

§ 1207.545 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1207.546 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

PART 1208—FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

Subpart A—Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order

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AUTHORITY: The Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, 7 U.S.C. 6801 *et seq.*

SOURCE: 59 FR 67143, Dec. 29, 1994, unless otherwise noted.

Subpart A—Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order

DEFINITIONS

§ 1208.1 Act.

Act means the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, Pub. L. 103-190, 7 U.S.C. §§6801 *et seq.*, and any amendments thereto.

§ 1208.2 Consumer information.

Consumer information means any action or program that provides information to consumers and other persons on appropriate uses for cut flowers and greens under varied circumstances, or on the care and handling of cut flowers and greens.

§ 1208.3 Council.

Council means the Fresh Cut Flowers and Fresh Cut Greens Promotion Council established pursuant to §1208.30 of this subpart and which shall be referred to as the National PromoFlor Council.

§ 1208.4 Cut flowers.

Cut flowers include all flowers cut from growing plants that are used as fresh-cut flowers and that are produced under cover or in field operations, but

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not including foliage plants, floral supplies, or flowering plants.

§ 1208.5 Cut greens.

Cut greens include all cultivated or noncultivated decorative foliage cut from growing plants that are used as fresh-cut decorative foliage (except Christmas trees) and that are produced under cover or in field operations, but not including foliage plants, floral supplies, or flowering plants.

§ 1208.6 Cut flowers and greens.

The term *cut flowers and greens* means either cut flowers or cut greens, even though the cut flowers or cut greens are sold as separate commodities by a person in the floral marketing system, or cut flowers and cut greens collectively when both commodities are sold by a person in the floral marketing system.

§ 1208.7 Department.

Department means the United States Department of Agriculture.

§ 1208.8 Exempt handler.

Exempt handler means a person who would otherwise be considered to be a qualified handler except that the person's annual sales of cut flowers and greens to retailers and other exempt handlers is less than \$750,000.

§ 1208.9 Fiscal year.

Fiscal year means a 12-month period recommended by the Council and approved by the Secretary.

§ 1208.10 Gross sales price.

Gross sales price means the total amount of the transaction in a sale of cut flowers and greens from a handler to a retailer or exempt handler including but not limited to charges such as containers, pre-cooling, packing, sleeving, delivery, freight, shipping, or other charges necessary to the protection and preservation of the cut flowers and greens.

§ 1208.11 Order.

Order means this subpart.

§ 1208.12 Part and subpart.

Part means the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order and all rules and regulations issued pursuant to the Act. The order itself shall be a subpart of such part.

§ 1208.13 Person.

Person means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, society, cooperative, or other legal entity.

§ 1208.14 Promotion.

Promotion means any action determined by the Secretary to advance the image, desirability, or marketability of cut flowers and greens, including paid advertising.

§ 1208.15 Producer that is a qualified handler.

Producer that is a qualified handler means an entity that is engaged: In the domestic production, for sale in commerce, of cut flowers and greens and that owns or shares in the ownership and risk of loss of the cut flowers and greens; or as a first processor of noncultivated greens, in receiving the greens from a person who gathers the greens for handling; and is subject to assessments as a qualified handler under the order.

§ 1208.16 Qualified handler.

Qualified handler means a person operating in the cut flowers and greens marketing system that sells domestic or imported cut flowers and greens to retailers and exempt handlers and whose annual sales of cut flowers and greens to retailers and exempt handlers are \$750,000 or more. The term does not include a person who only physically transports or delivers cut flowers and greens. However, the term does include, but is not limited to, the following entities when they have the requisite volume of sales of cut flowers and greens as provided in §§ 1208.50 and 1208.57:

(a) A qualified wholesale handler—a person in business as a floral wholesale jobber (*i.e.*, a person who conducts a

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commission or other wholesale business in buying and selling cut flowers and greens) or as a floral supplier (*i.e.*, a person engaged in acquiring cut flowers and greens to be manufactured into floral articles or otherwise processed for resale) if the annual value of the qualified wholesale handlers sale of cut flowers and greens to retailers and exempt handlers is \$750,000 or more;

(b) A manufacturer of bouquets for sale to retailers if the cut flowers and greens used in such articles are a substantial portion of the value of the manufactured floral articles;

(c) A manufacturer of floral articles (other than bouquets) for sale to retailers if the cut flowers and greens used in such articles are a substantial portion of the value of the manufactured floral articles;

(d) An auction house that clears the sale of cut flowers and greens to retailers and exempt handlers through a central clearinghouse;

(e) A distribution center that is owned or controlled by a retailer if the predominant retail business activity of the retailer is floral sales. In addition to sales, non-sale transfers of cut flowers and greens by the distribution center to retail outlets, shall be counted for the purpose of applying the \$750,000 minimum volume rule to the center and the value of such transfers shall be determined as provided in §§ 1208.50 and 1208.57;

(f) An importer that is a qualified handler—a person whose principal activity is the importation of cut flowers and greens into the United States (either directly or as an agent, broker, or consignee of any person or nation that produces or handles cut flowers and greens outside of the United States for sale in the United States) and who sells such cut flowers and greens to retailers and exempt handlers or directly to consumers, if the annual combined value of such sales determined as provided in §§ 1208.50 and 1208.57 totals \$750,000 or more;

(g) A producer that is a qualified handler, *e.g.*, a person who produces cut flowers and greens and who sells such cut flowers and greens directly to retailers or consumers if the annual combined value of such sales determined as

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provided in §§ 1208.50 and 1208.57 totals \$750,000 or more.

§ 1208.17 Research.

Research means market research and studies limited to the support of advertising, market development, and other promotion efforts and consumer information efforts relating to cut flowers and greens, including educational activities.

§ 1208.18 Retailer.

Retailer means a person who sells cut flowers and greens to consumers. The term includes:

(a) All retail outlets that sell cut flowers and greens to consumers including retail florists, supermarkets, and other mass market retail outlets that sell such cut flowers or greens, except distribution centers defined in § 1208.16(e) (*i.e.*, centers that are owned or controlled by a retailer if the predominant retail business activity of the retailer is floral sales and whose sales and non-sale transfers of cut flowers and greens to retail outlets total \$750,000 or more, determined as provided in this subpart) even though such centers may also make direct sales to consumers.

(b) Distribution centers owned or controlled by a retailer (or distribution centers owned or controlled cooperatively by a group of such retailers) when the predominant business activity of the retailer or retailers is not the sale of cut flowers and greens to consumers; and

(c) Distribution centers independently owned but operated primarily to provide food products to retail stores.

§ 1208.19 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1208.20 Substantial portion.

Substantial portion means that portion of the total value of manufactured floral articles that represents the value of the cut flowers and greens in such

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articles (expressed as a percentage factor) which the Council, with the approval of the Secretary, finds to be great enough to cause such articles to be classed as cut flowers and greens under this subpart.

§ 1208.21 State.

State means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (until such time as the Compact of Free Association is ratified).

§ 1208.22 Traditional retailer.

Traditional retailer means any retailer, as defined in § 1208.18, whose primary business is the sale of floral products, including fresh cut flowers and cut greens, or who has a specific department dedicated to the sale of floral products, including fresh cut flowers and cut greens.

§ 1208.23 Traditional retail florist organization.

Traditional florist organization means membership organizations of traditional retailers with activities and membership which are nationwide in scope.

§ 1208.24 United States.

United States means the States collectively.

ESTABLISHMENT OF THE COUNCIL

§ 1208.30 Establishment and membership of the Council.

(a) A Fresh Cut Flowers and Fresh Cut Greens Promotion Council which shall be named the National PromoFlor Council is hereby established to administer the terms and provisions of this subpart. The Council shall consist of 25 members nominated by the floral industry and appointed by the Secretary, as provided in this subpart, each of whom shall have an alternate nominated and appointed in the

same manner as members of the Council are nominated and appointed.

(b) The membership of the Council shall be divided as follows:

(1) 14 members and their alternates shall represent qualified wholesale handlers of domestic or imported cut flowers and greens;

(2) Three members and their alternates shall represent producers that are qualified handlers of cut flowers and greens;

(3) Three members and their alternates shall represent importers that are qualified handlers of cut flowers and greens;

(4) Three members and their alternates shall represent traditional retailers of cut flowers and greens;

(5) One member and alternate shall represent persons who produce cut flowers and greens in locations east of the Mississippi River; and

(6) One member and alternate shall represent persons who produce cut flowers and greens in locations west of the Mississippi River.

§ 1208.31 Election and appointment of members and alternates other than retailers.

(a) PromoFlor Organizing Group, Inc., an industry organizing committee, is designated as an election committee for the purpose of receiving the names of individuals who are engaged in the industry and who are prepared to serve as members (other than retailer members) of the Council or as alternates if elected as nominees and if selected by the Secretary for such positions.

(b) The election committee shall, within five (5) days of the issuance of this subpart and with the assistance of the Secretary, request the submission of names of candidates for nominees from those segments of the industry for which nominees must be selected by an election process. These segments are: qualified wholesale handlers; importers who are qualified handlers; producers of cut flowers and greens who are qualified handlers; and producers of cut flowers and greens without regard to whether they are qualified handlers.

Notification of the industry of the selection process by the election committee shall be by a news release to industry publications and where appropriate, newspapers of general circulation. In order to be assured of a place on the slate of candidates, the names of candidates must be received by the election committee not later than fifteen (15) days after the date of the first such news release.

(c) Names of candidates shall be sought for the following seats on the Council:

(1) 14 members and their respective alternates to represent qualified wholesale handlers of domestic or imported cut flowers and greens. Two such members and their respective alternates to represent the United States at large and two such members and their respective alternates to represent each of the following regions:

Region 1 (Pacific): Alaska, California, Hawaii, Oregon, Washington, the Commonwealth of the Northern Mariana Islands, Guam, the Federated States of Micronesia, American Samoa, the Republic of the Marshall Islands, and the Republic of Palau.

Region 2 (Inter-Mountain): Arizona, Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

Region 3 (North Central): Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, and Wisconsin.

Region 4 (Northeast): Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

Region 5 (Mid-Atlantic): Delaware, District of Columbia, Kentucky, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia.

Region 6 (Southeast): Alabama, Florida, Georgia, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the United States Virgin Islands.

(2) Three at-large members and their alternates to represent importers that are qualified handlers of cut flowers and greens.

(3) Three members and their alternates to represent producers of cut flowers and greens that are qualified handlers of cut flowers and greens. There shall be one such member and alternate from each of the following production areas:

Production Area 1: California.

Production Area 2: Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming.

Production Area 3: Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

(4) Two members and their respective alternates to represent persons who produce cut flowers and greens in locations east and west of the Mississippi River, respectively. There shall be one such member and alternate from the east, and one such member and alternate from the west.

(d) Names of candidates for nominees may be submitted by state, regional (either regions within a state or regions that include more than one state as appropriate), or national industry organizations, provided that the organization has members engaged in the appropriate segment of the industry and from the region or production area if applicable, or by petition. The names of candidates submitted by an industry organization shall be accompanied by statements showing the role of the organization in the industry and general information about the membership it represents. No industry organization may submit more than two names of candidates for each seat on the Council. The names of candidates submitted by petition shall be accompanied by petitions in support of such candidate, signed by not less than ten (10) persons engaged in the appropriate segment of the industry and from the region or production area, if applicable, that the candidate will represent if ultimately selected by the Secretary. Submission of names of all candidates, whether by organizations or by petition, must include a certification by the candidate that the candidate is within the segment of the industry and the region or production area for which the candidate is nominated and, if elected as a nominee and if subsequently appointed by the Secretary, the candidate is willing to serve as a member or alternate member on the Council.

(e) The names of candidates so submitted shall be reviewed and organized by the election committee for the preparation of slates of candidates. Separate slates for each segment and region of the industry shall be prepared as appropriate. There must be at least four candidates for each position on the Council for which nominees must be selected by election. No candidate may seek nomination for more than one seat on the Council. In a case where a candidate is nominated more than once, the election committee will decide which place on the ballot the candidate's name will appear. If insufficient candidates have been proposed for any seat, the election committee shall select additional candidates as required. The slates shall be prepared not later than 5 days after the date for receiving names of candidates by the election committee.

(f) After all candidates have been listed on the slates of candidates, the slates shall be supplied to an independent certified public accounting (CPA) firm contracted by the election committee. The ballots shall be printed and distributed by the CPA firm by U.S. mail, or other means selected by the election committee, not later than 15 days after the slates of candidates are received from the election committee. To the maximum extent practicable, ballots will be distributed to all persons who are eligible to vote for candidates under this subpart in the segment of the industry, the region, or in the United States as a whole, as applicable, to which the ballot pertains. Ballots that are not returned to the CPA firm within 20 days shall be declared invalid. The votes for each candidate on the ballots shall be tallied by the CPA firm at the end of the voting period and the results furnished to the election committee. The election committee shall issue a news release setting forth the names of the candidates and the number of votes received by each candidate within 5 days after the voting period has ended. Those candidates on each of the ballots who rank first, second, third, and fourth in the number of votes received for each seat on the Council shall be declared the nominees for each such seat.

(g) The names of those declared the nominees for each of the seats on the Council representing the various segments of the industry and the designated regions or production areas, where applicable, shall be submitted to the Secretary in order of rank with the number of votes received by each such nominee shown after the nominee's name and with the recommendation that the nominee with the most votes for each of such seats be declared the member of the Council and the nominee with the next greatest number of votes for each of such seats be declared the alternate member. The Secretary shall then appoint from the nominees so provided the members and their alternates for each of such seats on the Council.

(h) Subsequent elections of nominees and appointment of members and alternates as terms expire shall be conducted by the Council or the Council staff in the manner similar to that described above except that the Council shall act as the election committee for which provision is made in this section. The nomination and election process shall be completed at least 90 days before the beginning of each nominee's term of office.

(i) The Council shall periodically review the cut flower and greens market in the United States for changes in the geographic distribution of importing, producing, and marketing facilities and shall, if appropriate, recommend changes in the regions and production areas described in this section to the Secretary for approval.

§ 1208.32 Designation and appointment of retailer members and alternates.

(a) Four nominations for one of the traditional retailer members of the Council and that member's alternate shall be received from the American Floral Marketing Council (AFMC) or a successor entity.

(b) Four nominations for each of two members of the Council and their alternates shall be received from national traditional retail florist organizations other than the AFMC. In order to be eligible to submit nominations for members and alternates to serve on the

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Council, such organizations must certify that their activities and membership are nationwide in scope. No more than four nominations for each seat may be submitted by each organization.

(c) The Secretary shall choose from among the names submitted by the AFMC the names of the member and alternate who shall fill the seat on the Council representing the AFMC. The Secretary shall choose from among the names submitted by national traditional retail florist organizations other than the AFMC the two members and their alternates who shall fill the other two seats on the Council representing traditional retailers.

§ 1208.33 Failure to nominate.

If any group of qualified wholesale handlers, producers that are qualified handlers, importers that are qualified handlers, persons who produce cut flowers and greens, or traditional retailers fails to nominate individuals for appointments as members or alternates of the Council, the Secretary may appoint individual(s) from the appropriate segment(s), region(s), or area(s) of the industry to fill the vacancy or vacancies. The failure of any nominee to promptly indicate the nominee's willingness to serve in such manner as may be prescribed by the Secretary shall be treated as a failure to nominate.

§ 1208.34 Term of office and compensation.

(a) The term of office for each member or alternate member of the Council shall be three years. As provided in the Act, the initial appointments on the Council shall be as follows: nine of the member appointments shall be for two-year terms, eight of the appointments shall be for three-year terms, and eight of the appointments shall be for four-year terms. Alternate members shall have the same terms of office as their respective members. The term of office on the initial Council shall be apportioned as follows:

(1) One of the two qualified wholesale handler members representing each of Regions 1, 2, 4, and 5 shall serve two-year terms of office; one of the two qualified wholesale handler members

representing each of Regions 3, 4, and 6 shall serve three-year terms of office; and one of the two qualified wholesale handler members representing each of Regions 1, 2, 3, 5, and 6 shall serve four-year terms of office.

(2) The two qualified wholesale handler members representing the United States at large shall serve terms of office of two years and three years respectively.

(3) The members representing producers that are qualified handlers from Production Areas 1 and 2 shall serve three-year terms of office, and the member representing producers that are qualified handlers from Production Area 3 shall serve a four-year term of office.

(4) The three members representing importers that are qualified handlers shall serve terms of office of two, three, and four years respectively.

(5) The members representing producers that produce cut flowers and greens east and west of the Mississippi River shall each serve two-year terms of office.

(6) The member representing retailers nominated by the AFMC shall serve a two-year term of office. The two members representing retailers not nominated by the AFMC shall serve three-year and four-year terms of office respectively.

(b) No member of the Council may serve more than two consecutive terms of three years, except that any member serving an initial term of four years or two years may serve an additional term of three years.

(c) The term of office for the initial Council shall begin immediately following appointment by the Secretary. Should the term of office of the initial Council begin before January 1, 1995, the time between appointment and January 1, 1995, shall not count towards the initial term of office. Should the term of office of the initial Council begin later than January 1, 1995, all time until the following January will count as a full year toward the terms of office set out in this section. In subsequent years, the term of office shall begin on January 1 or such other period which may be recommended by the Council and approved by the Secretary.

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(d) Members of the Council shall serve without compensation, but each member or alternate member acting in place of a member shall be reimbursed for the expenses incurred in performing duties as a member of the Council.

§ 1208.35 Vacancies.

(a) Should any Council member position become vacant, the alternate of that member shall automatically assume the position of said member. Candidates for the vacant alternate member position which resulted from the alternate filling the vacant member position shall be nominated in the manner specified in §§ 1208.31 and 1208.32. *Provided*, That a vacancy will not be required to be filled if the unexpired term is less than six months.

(b) Should the positions of both a member and such member's alternate become vacant, Candidates to serve the unexpired terms of office for such member and alternate shall be nominated in the manner specified in §§ 1208.31 and 1208.32. *Provided*, That a vacancy will not be required to be filled if the unexpired term is less than six months.

(c) If a member of the Council consistently refuses to perform the duties of a member of the Council, if a member of the Council fails to submit reports and remit assessments required under this part, or if a member of the Council is known to be engaged in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds that the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Council, a member may be removed by the Secretary upon a showing of adequate cause, if the Secretary determines that the person's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1208.36 Procedure.

(a) Thirteen (13) Council members, including alternates acting in place of members of the Council, shall constitute a quorum: *Provided*, That such alternates shall serve only when the member is absent from a meeting or is

disqualified. Any action of the Council shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In lieu of voting at an assembled meeting, and, when in the opinion of the chairperson of the Council such action is considered necessary, or for matters of an emergency nature when there is not enough time to call an assembled meeting, the Council may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, facsimile, or by other means of communication: *Provided*, That each member or alternate acting for a member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Council minutes.

§ 1208.37 Executive committee.

(a) The Council is authorized to appoint an executive committee of not more than nine persons from among its members. Initially, the executive committee shall be composed of the following:

- (1) Four members representing qualified wholesale handlers;
- (2) Two members representing producers that are qualified handlers;
- (3) Two members representing importers that are qualified handlers; and
- (4) One member representing traditional retailers.

(b) After the initial appointments, each appointment to the executive committee shall be made so as to ensure that the committee reflects, to the maximum extent practicable, the membership composition of the Council as a whole.

(c) Each initial appointment to the executive committee shall be for a term of two years. After the initial appointments, each appointment to the executive committee shall be for a term of one year.

(d) The Council may delegate to the executive committee the authority of the Council under this subpart to hire and manage staff and conduct the routine business of the Council consistent with such policies as are determined by the Council.

ACTIVITIES OF THE COUNCIL

§ 1208.40 Duties of the Council.

The Council shall have the following duties, in addition to the duties specified in other sections of this subpart:

(a) Administer this subpart in accordance with the terms and provisions of this subpart;

(b) Make rules and regulations to effectuate the terms and provisions of this subpart;

(c) Appoint members of the Council to serve on the executive committee, as provided in § 1208.37;

(d) Employ such persons as the Council determines are necessary, and set the compensation and define the duties of the persons;

(e) Develop budgets for the implementation of this subpart and submit the budgets to the Secretary for approval, and propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval plans and projects for cut flowers and greens promotion, consumer information, or related research;

(f) Implement plans and projects for cut flowers and greens promotion, consumer information, or related research, or contract or enter into agreements with appropriate persons to implement the plans and projects and pay the costs of the implementation of contracts and agreements with funds received under this subpart;

(g) Keep minutes, books, and records which clearly reflect all of the acts and transactions of the Council. Minutes of all meetings shall be promptly provided to the Secretary;

(h) Evaluate ongoing and completed plans and projects for cut flowers and greens promotion, consumer information, or related research;

(i) Receive, investigate, and report to the Secretary complaints of violations of this subpart and direct that the staff of the Council periodically review the list of importers of cut flowers and greens provided by the Customs Service to determine whether persons on the list are subject to this subpart;

(j) Recommend to the Secretary amendments to this subpart;

(k) Invest, pending disbursement under a plan or project, funds collected through assessments only in: Obligations of the United States or any agency of the United States, general obligations of any State or any political subdivision of a State, any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or obligations fully guaranteed as to principal and interest by the United States. Income from any such invested funds may be used only for a purpose for which the invested funds may be used.

(l) Prepare and submit to the Secretary such reports as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Council monthly, or at such times as prescribed by the Secretary. Monthly financial statements shall be submitted to the Department and shall include at least:

(1) A balance sheet, and

(2) An expense budget comparison showing expenditures during the month, year-to-date expenditures, and an unexpended budget. Upon request, a summary of checks issued by the Council is to be made available. Reports shall be submitted within 30 days after the end of each month.

(m) To cause the books of the Council to be audited by an independent certified public accountant at the end of each fiscal period, and at such other times as the Council or the Secretary may deem necessary. The report of each audit shall show the receipt and expenditure of funds collected pursuant to this part, and shall be submitted to the Secretary.

(n) To give the Secretary the same notification, written or oral, as provided to Council members concerning all conference calls and meetings, including executive, advisory, subcommittee, and other meetings related to Council matters, and to grant the Secretary access to all such calls and meetings;

(o) To follow the Department's equal opportunity/civil rights policies; and

(p) Provide the Secretary such information as the Secretary may require.

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§ 1208.41 Budgets and expenses

(a) The Council shall promptly adopt and forward to the Secretary for approval its determination of the beginning and ending dates of an annual fiscal period to be used by the Council for budgeting and accounting purposes.

(b) The Council shall submit annual budgets of its anticipated expenses and disbursement in the administration of this subpart, including the projected costs for the promotion of cut flowers and greens, consumer information, and related research plans and projects to the Secretary for approval. The first budget, which shall be submitted promptly after the effective date of this subpart, shall cover such period as may remain before the beginning of the next fiscal year. If such fiscal period is 90 days or less, the first budget shall cover such period, as well as the next fiscal year. Thereafter, the Council shall submit budgets for each succeeding fiscal year not less than 30 days before the beginning of such fiscal year.

(c) The Council is authorized to incur such expenses (including provision for a reasonable reserve for operating contingencies) as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Expenses authorized in this paragraph shall be paid from assessments collected pursuant to § 1208.50, or other funds available to the Council.

(d) The Council shall reimburse the Secretary, from assessments collected pursuant to § 1208.50, or from other funds available to the Council, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after December 29, 1994.

(e) The Council shall establish an interest-bearing escrow account with a bank that is a member of the Federal Reserve System and shall deposit in such account an amount equal to the percentage determined by the Council to be held in reserve for the payment of refunds pursuant to § 1208.54.

(f) The Council may, with the approval of the Secretary, borrow money for the payment of administrative ex-

penses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

§ 1208.42 Plans, projects, budgets, and contracts.

The Council shall develop and implement plans and projects for the promotion of, and the dissemination of information about, cut flowers and greens, as well as for research related to cut flowers and greens in accordance with the following:

(a) The Council shall develop, or contract for the development of, plans and projects for advertising, sales promotion, other promotion, and for dissemination of consumer information, with respect to cut flowers and greens, and may disburse such funds as necessary for these purposes after such plans or projects have been submitted to, and approved by, the Secretary. Any such plan or project shall be directed toward increasing the general demand for cut flowers and greens and shall not make reference to a private brand or trade name, point of origin, or source of supply, except that the Council may offer such plans and projects of the Council for use by commercial parties such as local, regional, State, or national floral industry organizations, and then only under terms and conditions prescribed by the Council and approved by the Secretary. No plan or project may make use of unfair or deceptive acts or practices with respect to quality or value.

(b) The Council shall develop, or contract for the development of, plans and projects for research on the development of both established and new markets for cut flowers and greens and for research with respect to postharvest physiology, distribution, sale, marketing, use, and promotion of cut flowers and greens, as well as the dissemination of consumer information concerning cut flowers and greens. The Council is authorized to develop, or contract for the development of, such plans and projects for other research with respect to the marketing, promotion, and dissemination of information about cut flowers and greens as it finds appropriate. The Council may disburse such funds as necessary for these purposes after such plans or projects

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have been submitted to, and approved by, the Secretary.

(c) The Council shall submit to the Secretary, for approval before implementation, any contracts for development of plans and projects, as well as such plans and projects as may be developed by or approved by the Council for advertising, promotion, dissemination of information, and research. All such submissions to the Secretary shall be accompanied by a proposed budget showing the estimated expense to be incurred and the availability of revenue from which such expense may be paid. On approval of any such submission, the Council may proceed with the contract, plan or project and incur the expenses necessary to carry it out. Contracts or agreements to be submitted to the Secretary and entered into if approved by the Secretary shall, among such other matters as may be required, provide that:

(1) The contracting or agreeing party shall develop and submit to the Council a plan or project, together with a budget that includes the estimated costs to be incurred for the plan or project;

(2) The plan or project shall become effective on the approval of the Secretary; and

(3) The contracting or agreeing party shall:

(i) Keep accurate records of all of the transactions of the party;

(ii) Account for funds received and expenses;

(iii) Make periodic reports to the Council of activities conducted; and

(iv) Make such other reports as the Council or the Secretary may require.

(d) The Council, from time to time, may seek advice from and consult with experts from the production, import, wholesale, and retail segments of the cut flowers and greens industry to assist in the development of promotion, consumer information, and related research plans and projects. For these purposes, the Council may appoint special committees composed of persons other than Council members. A committee so appointed may not provide advice or recommendations to a representative of an agency, or an officer, of the Federal Government, and shall consult directly with the Council.

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§ 1208.43 Other contracts and agreements.

The Council may enter into contracts or agreements for administrative services, including contracts of employment, as may be required to conduct its business in accordance with such fiscal period budgets as may have been approved by the Secretary. To the extent appropriate to the contract involved, contracts entered into by the Council under the authority of this section shall contain provisions comparable to those described in § 1208.42(c).

ASSESSMENTS

§ 1208.50 Assessments.

(a) Each qualified handler, as defined in § 1208.16, shall pay to the Council an assessment in an amount determined in accordance with this subpart, on each sale of cut flowers and greens to a retailer or an exempt handler (as defined in § 1208.8) and on each non-sale transfer of cut flowers and greens to a retailer by a qualified handler that is a distribution center; as well as each direct sale of cut flowers and greens to a consumer by a producer that is a qualified handler, or by an importer that is a qualified handler. Such assessments shall be remitted by each qualified handler to the Council or its agent within 60 days after the end of the month in which the sale or non-sale transfer subject to assessment under this subpart took place. Such assessments shall be paid at the following rates:

(1) During the first three years after December 29, 1994.

(i) Except as provided in paragraph (a)(1)(ii) of this section, the rate shall be one-half of 1 (0.5) percent of the gross sales price of the cut flowers and greens sold;

(ii) In the case of non-sale transfers to a retailer by a qualified handler that is a distribution center and in the case of direct sales by importers or producers, the rate shall be one-half of 1 (0.5) percent of the amount of each transaction's valuation for assessment as provided in paragraph (b);

(2) After the first three years from December 29, 1994, the uniform assessment rate may be increased or decreased annually by not more than one-quarter of 1 (0.25) percent of the gross sales price of a product sold; or in the case of other transactions the amount of such transactions, except that the assessment rate may not exceed 1 percent of the gross sales price or the transaction amount. Changes in the rate of assessment may only be made if such changes are adopted by a two-thirds majority vote of the Council and approved by the Secretary (after public notice and opportunity for comment as provided in the Act) as being necessary to carry out the objectives of the Act. Any such change so approved by the Secretary may be put into effect without a referendum but shall be announced not less than 30 days prior to the beginning of a fiscal year.

(b) Each non-sale transfer of cut flowers and greens to a retailer from a qualified handler that is a distribution center shall be treated as a sale of cut flowers and greens to a retailer and shall be assessable. Each direct sale of cut flowers and greens to a consumer by a producer who is a qualified handler or an importer who is a qualified handler shall be assessable. These transactions shall be determined to have the following valuations for assessment purposes:

(1) In the case of a non-sale transfer of cut flowers and greens from a distribution center that is a qualified handler and each direct sale of cut flowers and greens to a consumer by an importer that is a qualified handler, the amount of the valuation of the cut flowers and greens for assessment purposes shall be the price paid by the distribution center or importer to acquire the cut flowers and greens, and determined by multiplying the acquisition price by a uniform factor of 1.43 to represent the markup of a wholesale handler on a sale to a retailer.

(2) In the case of a direct sale to a consumer by a producer who is a qualified handler, the valuation of the cut flowers and greens for assessment purposes shall be equal to an amount determined by multiplying the price paid by the consumer by a uniform factor of 0.50 to represent the cost of producing

the article and the markup of a wholesale handler on a sale to a retailer.

(3) The Council may consider and adopt changes in the uniform factors specified in paragraphs (b) (1) and (2) of this section. Any such change shall not become effective until it has been adopted by a majority vote of the Council and approved by the Secretary after public notice and opportunity to comment on such change as provided in the Act. Changes so adopted and approved shall become effective at the beginning of the next fiscal year.

(c) The collection of assessments shall commence on or after a date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be remitted, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments in an interest bearing account until the Council is constituted, and the funds may be transferred to the Council.

(d) Assessments shall be determined on the basis of the gross sales price. The Council, with the approval of the Secretary, may make uniform adjustments in determining the gross sales price when such adjustments reflect changes in trade practices or ensure equitable treatment of all qualified handlers paying assessments.

(e) No assessments may be levied on any sale of cut flowers and greens for export from the United States. The Council is authorized to establish procedures for the verification of exports.

(f) In general, assessment funds (less refunds, if any) shall be used:

(1) For payment of costs incurred in implementing and administering this subpart;

(2) To provide for a reasonable reserve to be maintained from assessments to be available for contingencies; and

(3) To cover the administrative costs incurred by the Secretary in implementing and administering this Act.

NOTE TO §1208.50: The requirement to pay assessments is terminated as of July 29, 1997.

[59 FR 67143, Dec. 29, 1994, as amended at 62 FR 40257, July 28, 1997]

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§ 1208.51 Influencing governmental action.

No funds collected by the Council shall in any manner be used for the purpose of influencing legislation or government action or policy, except to develop and recommend to the Secretary amendments to this subpart.

§ 1208.52 Charges for late payments.

Any assessment due the Council pursuant to §1208.50 that is not paid on time shall be increased 1.5 percent each month it remains unpaid beginning with the day following the date such assessment was due. If not paid in full, any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a failure to submit a report when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Council shall be based on the applicable postmark date or the date actually received by the Council, whichever is earlier.

§ 1208.53 Adjustment of accounts.

Whenever the Council or the Secretary determines through an audit of a person's reports, records, books, or accounts or through some other means that additional money is due the Council or that money is due such person from the Council, such person shall be notified of the amount due. The person shall then remit any amount due the Council by the next date for remitting assessments. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

§ 1208.54 Refunds of assessments and escrow account.

(a) Any qualified handler may demand and receive from the escrow account, subject to the limitation on such payments provided in paragraph (c), a one-time refund of any assess-

ments paid by or on behalf of the handler if the handler requests the refund before the initial referendum on this subpart is held and this subpart is rejected by the voters when it is submitted to the referendum. Such a refund will be paid only if all of the following conditions are met:

(1) The handler has paid the assessments sought to be refunded and has submitted proof of such payment;

(2) The handler does not support the program established under this subpart and so states in the handler's demand for a refund;

(3) The handler's demand for a refund is made on a form specified by the Council and filed not less than 10 days prior to the date when the initial referendum, conducted pursuant to §1208.60(a) to ascertain whether this subpart shall remain in effect, is scheduled to begin; and

(4) This subpart is not approved by a simple majority of the votes cast by qualified handlers in the initial referendum.

(b) The Council shall establish an escrow account to be used for assessment refunds, as needed, and shall place into the account an amount equal to 10 percent of the total amount of assessments collected during the period beginning on December 29, 1994 and ending on the date the results of the initial referendum are issued and the initial referendum is completed.

(c) If the amount in the escrow account is not sufficient to refund the total amount of assessments demanded by all qualified handlers determined eligible for refunds and this subpart is not approved in the referendum, the Council shall prorate the amount of all such refunds among all eligible qualified handlers that demand the refund. If there is any amount in excess of the amount needed to pay refunds and expenses, it shall be returned pro rata to those who paid assessments. If this subpart is approved in the referendum, there shall be no refunds made, and all funds in the escrow account shall be returned to the Council for use by the Council in accordance with the other provisions of this subpart.

§ 1208.55 Postponement of collections.

(a) The Council may grant a postponement of the payment of an assessment under this subpart for any qualified handler that establishes that it is financially unable to make the payment. In order that a qualified handler that is financially unable to pay an assessment may have the opportunity to petition the Council to postpone payment of such an assessment, as provided in the Act, the Council shall develop forms and procedures for this purpose as expeditiously as possible and submit them to the Secretary for approval and issuance after notice and an opportunity for public comment thereon. Such procedures shall, among other things, require that the handler demonstrate the handler's inability to pay through the submission of an opinion prepared by an independent certified public accountant (at the handler's expense) and any other documentation specified therein to the effect that the handler is insolvent or will be unable to continue to operate if the handler is required to pay the assessment when due.

(b) The procedures for obtaining a postponement of payment to be developed by the Council for submission to the Secretary shall also include provisions with respect to the period of postponement, the conditions of payment that may be imposed and the basis, if any, on which further extensions of the time for payment will be granted so as to appropriately reflect the demonstrated needs of the qualified handler.

§ 1208.56 Determinations.

(a) The Council is authorized to make the determinations required by this subpart as to the status of persons as qualified handlers and exempt handlers including determinations of the status of persons as qualified wholesale handlers, distribution centers that are qualified handlers, producers that are qualified handlers, importers that are qualified handlers, as well as such other determinations of status and facts as may be required for the effective administration of this subpart. Based on such determinations, the Council from time to time shall publish lists of exempt handlers who are

not required to pay assessments, and lists of qualified handlers who are required to pay assessments under this subpart.

(b) For the purpose of applying the \$750,000 annual sales limitation to a specific person in order to determine the status of the person as a qualified handler or an exempt handler or to a specific facility in order to determine the status of the facility as an eligible separate facility for the purpose of referenda, the Council is authorized to determine the annual sales volume of a person or facility.

(c) Any such determination shall be based on the sales of cut flowers and greens by the person or facility during the most recently-completed calendar year, except that in the case of a new business or other operation for which complete data on sales during all or part of the most recently-completed calendar year are not available to the Council, the determination may be made using an alternative time period or other alternative procedures as the Council may find appropriate. In making such determinations, the Council is authorized to make attributions in accordance with paragraphs (c) (1) through (4) of this section and for the purpose of determining the annual sales volume of a person or a separate facility of a person, sales attributable to a person shall include:

(1) In the case of an individual, sales attributable to the spouse, children, grandchildren, parents, and grandparents of the person;

(2) In the case of a partnership or member of a partnership, sales attributable to the partnership and other partners of the partnership;

(3) In the case of an individual or a partnership, sales attributable to any corporation or other entity in which the individual or partnership owns more than 50 percent of the stock or (if the entity is not a corporation) that the individual or partnership controls; and

(4) In the case of a corporation, sales attributable to any corporate subsidiary or other corporation or entity in which the corporation owns more than 50 percent of the stock or (if the entity is not a corporation) that the corporation controls.

(d) The Council is also authorized to attribute any stock ownership interest as may be required to carry out this subpart. In doing so a stock ownership interest in the entity that is owned by the spouse, children, grandchildren, parents, grandparents, or partners of an individual, or by a partnership in which a person is a partner, or by a corporation more than 50 percent of the stock of which is owned by a person, shall be treated as owned by the individual or person.

(e) For the purpose of this subpart, the Council, with the approval of the Secretary, may require a person who sells cut flowers and greens to retailers to submit reports to the Council on annual sales by the person and on stock ownership.

SUSPENSION OR TERMINATION

§ 1208.60 Suspension and termination.

If the Secretary finds that this subpart, or any provision of this subpart, obstructs or does not tend to effectuate the policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or the provision of this subpart under such terms as the Secretary determines are appropriate. Such termination or suspension shall not be considered an order within the meaning of such term in the Act.

§ 1208.61 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the assets of the Council. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Council, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Council under any contract or agreement entered into by it under this subpart;

(3) Make refunds from the escrow account to those persons who applied for refunds of assessments paid and who are eligible to receive such refunds. Such refunds shall be made within 30 days after the referendum results are issued.

(4) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Council and of the trustees, to such persons as the Secretary may direct; and

(5) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Council or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information programs, plans, or projects authorized under this subpart.

§ 1208.62 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation or rule issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such regulation or rule;

(b) Release or extinguish any violation of this subpart or any such regulation or rule; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

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REPORTS, BOOKS, AND RECORDS

§ 1208.70 Books, records, reports, cost control, and audits of the Council.

(a) The Council shall maintain the books and records that the Secretary may require to account for the receipt and disbursement of all funds entrusted to the Council in accordance with the provisions of this subpart, and shall prepare and submit to the Secretary, from time to time as prescribed by the Secretary, all reports that the Secretary may require.

(b) The Council shall, as soon as practicable after December 29, 1994 and after consultation with the Secretary and other appropriate persons, implement a system of cost controls based on normally accepted business practices that will ensure that the annual budgets of the Council include only amounts for administrative expenses that cover the minimum administrative activities and personnel needed to properly administer and enforce this subpart, and conduct, supervise, and evaluate plans and projects under this subpart.

(c) The Council shall cause the books and records of the Council to be audited by an independent certified public accountant at the end of each fiscal year. All audits must be performed in accordance with either standards issued by the American Institute of Certified Public Accountants or by the General Accounting Office. A report of each audit shall be submitted to the Secretary.

§ 1208.71 Reports, books, and records of persons subject to this subpart.

(a) Each qualified handler shall prepare and file reports containing such information as may be required by the Council with the approval of the Secretary. Such information shall include:

(1) Data showing the volume of sales and non-sale transfers of cut flowers and greens made during the reporting period;

(2) The amount of the assessment on such sales or non-sale transfers; and

(3) Any other data that may be required by the Council with the approval of the Secretary.

(b) Each person subject to this subpart shall maintain and make available

for inspection by agents of the Council and the Secretary such books and records as are determined by the Council with the approval of the Secretary, as necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1208.72 Confidential treatment.

(a) Information obtained from books, records, or reports required to be maintained or filed under the Act and this subpart shall be kept confidential by all persons, including agents and former agents of the Council, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Council members. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this paragraph shall be deemed to prohibit:

(1) The issuance of general statements, based upon the reports, of the number of persons subject to this subpart or statistical data collected from such reports, which statements do not identify the information furnished by any such persons, and

(2) The publication, by direction of the Secretary, of the name of any individual, group of individuals, partnership, corporation, association, cooperative, or other entity that has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart so violated.

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(b) No information on how a person voted in a referendum conducted under the Act shall be made public.

MISCELLANEOUS

§ 1208.80 Right of the Secretary.

All fiscal matters, programs or projects, by-laws, rules or regulations, reports, or other substantive actions proposed and prepared by the Council shall be submitted to the Secretary for approval.

§ 1208.81 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgement, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1208.82 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Council under this subpart shall be the property of the United States Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations, inure to the benefit of the Council. Upon termination of this subpart, §1208.61 shall apply to determine disposition of all such property.

§ 1208.83 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1208.84 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or cir-

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cumstances shall not be affected thereby.

§ 1208.85 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511, is OMB number 0581-0096, except Council member nominee information sheets are assigned OMB number 0505-0001.

Subpart B—Rules and Regulations

SOURCE: 61 FR 30501, June 17, 1996, unless otherwise noted.

DEFINITIONS

§ 1208.100 Terms defined.

Unless otherwise defined in this subpart, definitions or terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order of this part.

ASSESSMENTS

§ 1208.150 Procedures for postponement of collections.

(a) For a request for postponement of the payment of assessments to be granted, the qualified handler requesting such postponement must: Submit a written opinion from a Certified Public Accountant stating that the handler making the request is insolvent or will be unable to continue to operate if the handler is required to pay the assessments when due; and submit copies of the handler's last three (3) years' federal tax returns. The request must be in writing no later than 30 days after the assessment for the first month of the requested postponement period is due. Applications postmarked after the 30-day due date will not be considered by the Council. The qualified handler must file handler reports with the Council for each month during the postponement period. The postponement period may not exceed six (6) months unless an extension is requested and granted by the Council. Only one extension of up to six (6) months may be granted. Within the

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postponement period, the qualified handler will be exempt from paying assessments beginning with the first month for which the request for postponement is filed with the Council and for no more than six (6) months unless an extension is granted. The same procedures used for the initial request will be used to grant any extension. The written request must specify:

- (1) A reason for the request;
- (2) Detailed information concerning the qualified handler's name, address, and telephone and fax numbers;
- (3) The month(s) for which the request is made;
- (4) Assessments due per month or gross sales per month;
- (5) Total assessments due;
- (6) The percent or amount of the outstanding assessment to be paid each month after the postponement of payment is granted; and
- (7) The starting and ending date for the payment of assessments due.

(b) At the end of the postponement period, the qualified handler must pay the percent or amount outstanding of assessments agreed upon each month as well as any other assessments which are due. An extension of time for payment of postponed assessments, if granted, will be for the same months previously requested and granted. The extension must not exceed six (6) months. If a qualified handler requests that another period be postponed, that handler must file another application for the postponement of the assessment for the second period using the same procedure which was followed in requesting the first postponement. A qualified handler may request the postponement of the payment of assessments for a maximum of two periods of up to six (6) months each. The payment applicable to the second postponement period, if granted, may not be extended, and the payment period must not exceed the length of the postponement period. Payment of the total assessments due, when an extension and a second period are granted, must begin within one (1) year after the first postponed month's assessments were originally due. No additional postponements would be considered by the Council until the assessments owed for the first two periods have been paid.

The Council may conduct an audit of the qualified handler's records at any time to determine whether the qualified handler will be unable to continue to operate if the handler is required to pay the assessments due. In the event that postponed assessments are not paid when due, the Council can demand that all such assessments due be paid in their entirety.

(c) Charges for late payment of assessments as described in §1208.52 will not be imposed on assessments for which postponement of payment has been granted.

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

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PROMOTION, RESEARCH, CONSUMER INFORMATION, AND INDUSTRY INFORMATION

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